[redacted]

No. 82-513

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

MINTA H. REICHEL,

Petitioner,

vs.

CALIFORNIA SHASTA COUNTY
SUPERIOR COURT JUDGES, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

JOHN SULLIVAN KENNY
County Counsel
County of Shasta
1558 West Street
Redding, CA 96001
(916) 246-5711
Counsel for Respondents

TABLE OF CONTENTS

Statement of the Case 2

Reasons Why the Writ Should Be Denied 6

1. The Issues Are Not Important Enough To Warrant Review . 6

2. The Court Below Fully Considered And Correctly Decided The Issues 8

3. The Decision Below Does Not Conflict With Any Other Decision 12

Conclusion 16

CITATIONS

Cases:

Bounds v. Smith, 430 U.S. 817 (1977) 9,10

O'Connor v. Mowbray, 504 F.Supp. 129 (D.Nev. 1980) . . 13,14,15,16

Wright v. Lane County Commissioners, 459 F.2d 1021 (1972) .8,12,13,15,16

California Statutes:

Business & Professions §6060, et seq 9
Business & Professions §6360 . . 15
Code of Civil Procedure 7

No. 82-513

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

MINTA H. REICHEL,

Petitioner,

vs.

CALIFORNIA SHASTA COUNTY
SUPERIOR COURT JUDGES, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

Respondents, CLYDE SMALL, RICHARD W. ABBE, RICHARD B. EATON, WILLIAM H. PHELPS, HENRY KEEFER, BESSIE L.

SANDERS, PATRICK LA POINTE, JOHN R. CATON, R. D. "DAN" GOVER, SUSAN L. EVANS, STEPHEN C. SWENDIMAN, ROBERT A. REHBERG, LAURENCE W. CARR, ALBERT F. CUNNINGHAM and TODD C. FINEBERG respectfully request that this court deny the petition for writ of certiorari seeking review of the Ninth Circuit's unpublished opinion in this case.

STATEMENT OF THE CASE

(a) The litigation.

In 1970, appellant, who was represented by counsel, brought an action against the City of Redding and certain non-public defendants for inverse condemnation. Appellant lost.

In 1976 and 1977, appellant filed three state court lawsuits in propria persona. One of the cases was for malpractice against her former

attorneys in the inverse condemnation action; the case was never set for trial and the mandatory period for prosecuting the action ran in February, 1982. The other two cases were nearly identical to the original inverse condemnation suit; they were dismissed on the bases of collateral estoppel and res judicata and the dismissals were affirmed by the state appellate court.

In 1979, appellant instituted her action for damages in federal district court, alleging that respondents [1] violated her civil rights by conspir-

---

1/ Respondents are present and former Shasta County Superior Court judges, present and former members of the Shasta county Board of Supervisors, members of the Board of Directors of the Law Library Committee, the former Redding City Attorney, an attorney who represented appellant in the inverse condemnation action and the private attorneys who represented the defendants in that action.

ing to limit her access to the county law library during part of the time she was litigating her three pro per lawsuits. Appellant sought damages equal to the amounts she claimed she "may have" recovered in those suits.

In March 1980, the district court granted respondents' motion to dismiss appellant's second amended complaint for failure to state a claim upon which relief could be granted.

In March 1982, the Court of Appeals for the Ninth Circuit affirmed the district court's judgment.

(b) The limited hours policy.

Until October of 1974, the Shasta County law library was open to the general public during County business hours. Because of the theft of and damage to library materials, the general public's use of the library was reduced to two hours per business

day, or approximately 42 hours per month, although officers of the court were allowed to borrow a key to get into the library when it was closed. The 42-hour limitation remained in effect for three years, until January of 1978, when a half-time secretary-librarian position was first funded and the library policy was changed to increase the general public's access to four hours per day (the time when the secretary-librarian was in the library) or about 84 hours per month. During this time, appellant could use the law libraries in Weaverville, Oroville, Davis and Sacramento. A Redding law firm offered her the use of its library some time after the restrictions went into effect.

In February, 1980, when the librarian position was changed from half-time to full-time, the

restrictions were lifted. Appellant had two years of unrestricted access to the library for two years of the pendency of her malpractice case.

REASONS WHY THE WRIT SHOULD BE DENIED

1. The Issues Are Not Important Enough To Warrant Review.

(a) The restrictions on the general public's use of the library were removed in February of 1980.

(b) No other person will be affected by the outcome of this action. There are no other pending suits or claims arising from the former restrictions.

(c) Appellant cannot possibly prevail in her action for damages for the alleged violation of her civil rights.

Appellant seeks only one remedy: damages equal to the sums she claims she "may have" recovered in the three unsuccessful state actions if she had

had unrestricted access to the law library. She does not seek general damages and does not plead facts which would allow her to recover them.

Appellant cannot show a causal nexus between limited library access and her failure to prevail in the underlying actions. In the malpractice action, appellant had a period of two years, from February of 1980 to February of 1982, during which there were no restrictions on her library access.[2/] Therefore, her failure to prevail in the malpractice action could not have been proximately caused by limited library access. The other

---

2/ California Code of Civil Procedure §583 allows a litigant five years to bring a civil action to trial. That period is extended during the time the case is on appeal. Appellant filed her action in May of 1976. Her appeal extended the period of time nine months, to February 1982.

two actions, as noted by the Ninth Circuit, were "clearly barred by res judicata and collateral estoppel." (See Attachment APP-A, 8a to appellant's petition.)

2. The Court Below Fully Considered And Correctly Decided The Issues.

The Court of Appeals correctly found that the former limitations on the general public's access to the library were rationally related to a valid objective, insuring the security of the library and its materials.

In Wright v. Lane County Commissioners 459 F.2d 1021 (1972), the Ninth Circuit recognized that a county's interest in security may be achieved in limiting access to the law library "to a recognized and trusted segment of the community," such as officers of the court. (459 F.2d at 1023.) The California State Bar

reviews the general fitness and the criminal background of prospective attorneys and to some extent regulates the behavior of members of the Bar, (Business and Professions Code §6060 et seq.) but there is no way for a county to assess and limit the security risk posed by individual members of the general public being allowed access to an unstaffed library. Further, members of the general public do not have the long-term need for law library materials which prompts attorneys to safeguard the library.

Due process is not violated by the placing of reasonable limitations on access to legal information, even in situations where the right to be protected is more dear than merely the right to pursue civil actions for damages. In Bounds v. Smith, 430 U.S.

817 (1977), this Court held that prison officials may safeguard a prisoner's right to access to the courts by providing him either legal counsel or reasonable access to legal materials. The "reasonable access" approved by this court consisted of a system by which an inmate desiring to use the library would make an appointment to do so and then would wait up to four weeks for his turn for a full day's library use. (430 U.S. at 819.) Surely a litigant in a civil action for malpractice or property damage is entitled to no greater access to legal materials than that given to incarcerated persons who are deprived of their freedom and are "seeking new trials, release from confinement or vindication of fundamental civil rights." (430 U.S. at 827.)

A prisoner, for whom eight hours in the library per month is "reasonable access" to the courts, generally has only the prison law library as a resource. Here, appellant had access to the county law library for 42-84 hours per month. Appellant is not an indigent; she could have purchased paperback volumes of the applicable state codes. She could have photocopied materials to use at home. Libraries in Weaverville, Oroville, Davis and Sacramento were available. During part of the time the "limited hours restriction" was in effect, she was offered use of the library of a local law firm.

The restrictions on the general public's use of the law library may have inconvenienced appellant, but they were not so onerous as to

prohibit her from adequately preparing her cases.

Moreover, appellant had two years of unrestricted library access to pursue her malpractice claim, the only one of her three state actions which was not clearly barred by collateral estoppel or res judicata. Her failure to bring the case to trial cannot be attributed to respondents.

3. The Decision Below Does Not Conflict With Any Other Decision.

Two other cases have discussed whether allowing greater library access to officers of the court than to the general public or pro per litigants is constitutionally permissible.

The controlling authority is Wright v. Lane County Commissioners, 459 F.2d 1021 (1972), in which the Ninth Circuit affirmed the dismissal

of a pro per litigant's complaint against a county board of commissioners and a local bar association for conspiracy to deprive him of access to the library equal to that allowed judges and officers of the court. The Court of Appeals held that the attorney-litigant classification and the hours selected both possessed a reasonable relationship to the achievement of the goal of security. (459 F.2d at 1023.)

A district court case, O'Connor v. Mowbray, 504 F.Supp. 139 (D.Nev. 1980), in which the court held that the Nevada Supreme Court must re-open its law library to pro se litigants after business hours, is distinguishable from both Wright and this action.

In O'Connor, attorneys and pro per litigants had access to the Nevada Supreme Court library after business

hours until 1980. Although there was no indication that anything had been taken from or damaged within the library or elsewhere in the building (504 F.Supp. at 141), members of the court determined that pro se litigants would no longer be allowed into the building after hours.

The district court pointed to a state statute (which was not applicable to county law libraries) which required the Nevada Supreme Court library to be "accessible to users in all parts of the state." The court opined that "the Legislature anticipated that hours beyond 8 A.M. to 5 P.M might be required for the library to serve its purpose" of providing service to Nevada residents who lived great distances from the Supreme Court. (504 F.Supp. at 142.) Unlike Nevada, California has no statutory

requirement that the Shasta County Law Library be accessible to persons living in all parts of the state.

The O'Connor court distinguished Wright, supra, finding significant the fact that the Oregon statute, but not the Nevada statute, specifically mentioned the use of the library by attorneys. California's statutory scheme is similar to Oregon's and also permits county law libraries to be used by "members of the State Bar." (Business and Professions Code §6360.)

Finally, in O'Connor the remedy was an injunction. Here no injunction is necessary as access has been unrestricted for over 2½ years.

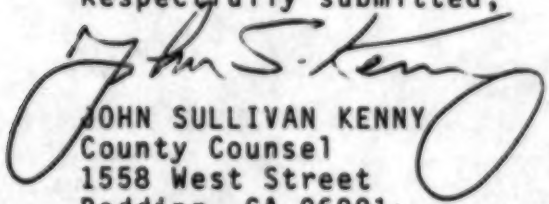
In light of the distinctive nature of the Nevada statutory scheme and because there was no security problem in the Nevada Supreme Court library, the Ninth Circuit's

determination below that this case more closely resembles Wright than O'Connor was correct. Appellant, like Wright, has failed to state a claim upon which relief can be granted.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,



JOHN SULLIVAN KENNY
County Counsel
1558 West Street
Redding, CA 96001
Counsel for Respondents

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA; COUNTY OF SHASTA

I am a citizen of the United States and employed in Shasta County; I am over the age of eighteen years and not a party to the within action; my business address is 1558 West Street, Redding, California 96001; on this date I served RESPONDENTS' BRIEF IN OPPOSITION by placing a true copies thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box at Redding, California addressed as set forth below.

Minta H. Reichel, P. O. Box 2304,
Redding, California 96099

Franklin S. Cibula, P. O. Box A.M.
Redding, California 96099

Wells, Wingate & Small, P.O. Box 1846, Redding, California 96099

Presleigh, Arel & Dunlap, P.O. Box AJ, Redding, California 96099

Diepenbrock, Wulff, Plant & Hannegan, 450 Capitol Mall, Suite 800, Sacramento, CA 95814

and by personally deliving a copy of said RESPONDENTS' BRIEF IN OPPOSITION on October 19, 1982, to

Clerk of the Superior Court, County of Shasta, Courthouse, Redding, CA 96001

I declare under penalty of perjury that the foregoing is true and correct.

Executed October 19, 1982, at Redding, California.